

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)	
)	
Hirofumi Yamagiwa)	Group Art Unit: 2664
)	
Application No.: 09/955,955)	Examiner: Andrew LEE
)	
Filed: September 20, 2001)	
)	
For: BASE STATION MODULATOR/)	
DEMODULATOR AND ATM)	
CELL SEND/RECEIVE METHOD)	

PETITION FOR REVIVAL OF AN APPLICATION ABANDONED
UNAVOIDABLY UNDER 37 C.F.R. § 1.137(a)

U.S. Patent and Trademark Office
Customer Window, Mail Stop Petition
Randolph Building
401 Dulany St.
Alexandria, Virginia 22314

Sir:

The above-identified application became abandoned due to an failure to respond to the non-final Office Action issued April 19, 2005 within the statutory period of three months from the mailing date of the Office Action. The date of abandonment, July 20, 2006, is the day after the expiration date of the period set for reply in the Office Action.

Applicant hereby petitions for revival of this application. A grantable petition requires the following items:

- (1) Petition fee as set forth in 37 C.F.R. § 1.17(l);
- (2) A reply to the outstanding Office Action; and

(3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable.

Items (1) and (2), above, are included herewith with this petition.

Regarding item (3), Applicant submits that the delay in filing the reply to the Office Action was unavoidable because the Patent Office mailed the Office Action to a law firm not associated with this application. More specifically, it appears from the online Image File Wrapper ("IFW") that on November 25, 2002, the Patent Office mistakenly entered a "Change of Address/Power of Attorney" paper into the file that changed the correspondence address and the practitioners of record to that associated with customer number 909. Neither Applicant nor Applicant's representative filed this form. The law firm associated with customer number 909, Pillsbury Winthrop, LLP, has never represented Applicant for this patent application.

According to the IFW, on February 22, 2005, a new Power of Attorney was filed appointing the practitioners associated with customer number 44987 ("Harrity Snyder, LLP") as the attorneys of record. On April 19, 2005 a non-final Office Action was mailed to Pillsbury, Winthrop, LLP. On April 25, 2005, the Patent Office mailed a "Notice of Acceptance of Power of Attorney" to Harrity Snyder, LLP and on May 3, 2006, a Notice of Abandonment was mailed to Harrity Snyder, LLP.

Applicant submits that the delay in replying to the Office Action was unavoidable, as the record clearly shows that the Patent Office never notified Applicant, Applicant's original representative, or Applicant's current representative, of the Office Action. Further, Applicant would have had no reason to suspect that the Patent Office had entered the incorrect correspondence address as it does not appear from the IFW that the Patent Office ever informed

the original representative that the correspondence address and practitioners of record had been changed.

MPEP 711.03(c), requires, for a showing of unavoidable delay, the Applicant must show: “(1) evidence concerning the procedures in place that should have avoided the error resulting in the delay; (2) evidence concerning the training and experience of the persons responsible for the error; and (3) copies of any applicable docketing records to show that the error was in fact the cause of the delay.” Applicant submits that these factors are not relevant in this situation, as the entire delay in responding to the Office Action was caused by the Patent Office's incorrect changing of the correspondence address for this application.

In the event that there are any additional fees due in connection with this Petition that are not paid for herewith, the Commissioner is hereby authorized to charge any appropriate fees that may be required by this paper that are not accounted for above, and to credit any overpayment, to Deposit Account No. 50-1070.

Respectfully submitted,

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Date: June 9, 2006